

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DIMITRI QAFKO;)	
)	Case No.
v.)	Hon.
)	
ELAINE C. DUKE , Acting Secretary of)	
the United States Department of Homeland)	
Security, in her official capacity;)	
)	
CHRISTOPHER M. PERRY , Director, Detroit)	
Field Office, United States Customs and)	
Border Protection, in his official capacity;)	
)	
CHARLES T. MULLINS, JR. , CBP Internal Affairs)	
Criminal Investigator, in his official capacity;)	
)	
AARON F. POYER , CBP Supervisory Criminal)	
Investigator, in his official capacity; and,)	
)	
UNIDENTIFIED CBP OFFICERS , in their)	
official capacities;)	
)	
Defendants.)	

COMPLAINT

Plaintiff, **Dimitri Qafko**, by and through his attorneys, CAIR National Legal Defense Fund (“CAIR”), and for his Complaint against Defendants **ELAINE C. DUKE, CHRISTOPHER PERRY, CHARLES T. MULLINS, JR., AARON F. POYER** and **UNIDENTIFIED CBP OFFICERS** (collectively “Defendants”), for discrimination on the basis of his race, religion, national origin, retaliation and hostile work environment, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) *et seq.* (“Title VII”) and for violations of the United States Constitution, states as follows:

Jurisdiction and Venue

1. Plaintiff's claims for discrimination on the basis of race, religion and national origin, retaliation, and hostile work environment in violation of Title VII are brought pursuant to 42 U.S.C. § 2000(e) *et seq.*

2. Under U.S. Const. Art. III §2, this Court also has jurisdiction because the rights sought to be protected herein are secured by the United States Constitution.

3. Jurisdiction is proper pursuant to 28 U.S.C. § 1331 and the United States Constitution.

4. A substantial part of the unlawful acts alleged herein were committed within the jurisdiction of the United States District Court for the Eastern District of Michigan.

5. This Court has personal jurisdiction over Defendants because Defendants reside and conduct business in the State of Michigan.

6. Venue is proper under 42 U.S.C. § 1391(e) as to all Defendants because Defendants are officers or employees of agencies of the United States sued in their official and/or individual capacities and because this judicial district is where a substantial part of the events or omissions giving rise to the claims occurred.

Parties

7. Plaintiff Dimitri Qafko is a United States Citizen, Albanian and a Muslim residing in Wayne County, Michigan.

8. Defendant Elaine C. Duke is Acting Secretary of the United States Department of Homeland Security ("DHS"). Defendant Duke is being sued in her official capacity, only.

9. Defendant Christopher M. Perry is Director of the CBP Detroit Field Office ("CBP Detroit"). Defendant Perry is being sued in his official capacity, only.

10. Defendant Charles T. Mullins, Jr. is a CBP Internal Affairs Criminal Investigator. Defendant Mullins, Jr. is being sued in his official capacity, only.

11. Defendant Aaron F. Poyer is a CBP Supervisory Criminal Investigator. Defendant Poyer is being sued in his official capacity, only.

12. Defendants Unidentified CBP Officers are the unidentified CBP Officers that participated in the unofficial meetings with Plaintiff Qafko described below that took place on May 8, 2015; August 31, 2015; September 2, 2015 and September 8, 2015. Defendants Unidentified CBP Officers are being sued in their official capacities, only.

Administrative History

13. Plaintiff filed a timely Equal Employment Opportunity complaint with DHS on November 18, 2016 (Case No. HS-CBP-00101-2017).

14. The DHS Office for Civil Rights and Civil Liberties ("CRCL") issued Plaintiff a notice of right to sue, which was mailed to Plaintiff on or about September 9, 2017.

Factual Background

15. Plaintiff Dimitri Qafko was hired as a Customs and Border Protection Officer, GS-1895-12, in January 2009 and was stationed at the Detroit Metropolitan Airport, Detroit Field Office.

16. On or about four separate occasions – May 8, 2015; August 31, 2015; September 2, 2015 and September 8, 2015 – CBP Internal Affairs Criminal Investigator Charles T. Mullins, Jr., GS-1811-14, Supervisory Criminal Investigator Aaron F. Poyer, GS-1811-15 and Unidentified CBP Officers met with Plaintiff on an unofficial basis.

17. During these unofficial meetings, Mr. Mullins, Jr., Mr. Poyer and the other Unidentified CBP Officers harassed and intimidated Plaintiff Qafko into becoming an

informant by infiltrating Albanian and Iraqi gangs and smugglers, and obtaining intelligence for use in an ongoing criminal investigation.

18. Mr. Mullins, Jr., Mr. Poyer and the other Unidentified CBP Officers threatened Plaintiff Qafko with charges of Inappropriate Association and Misuse of TECS, which is a government database, in an attempt to coerce him into becoming an informant.

19. During the meetings, Plaintiff Qafko was told that because he was of Albanian national origin, he was chosen to act as an informant because he “may know” some of the Albanian gang members and smugglers, and because the Albanian gang members and smugglers were more likely to “trust him.”

20. Moreover, Plaintiff Qafko was told that the Albanian gang members and smugglers were more likely to know him because of his Albanian national origin.

21. Upon information and belief, Defendants attempted to coerce Plaintiff Qafko to infiltrate Iraqi gangs solely because of his Islamic faith and because Iraq is a Muslim-majority country, for substantially the same reasons they gave Plaintiff Qafko regarding his Albanian national origin. More than 90% of the Iraqi population consists of Muslims.

22. Plaintiff Qafko repeatedly refused to become an informant and infiltrate Albanian and Iraqi gangs and smugglers due to concerns regarding his and his family’s safety.

23. In fact, Plaintiff Qafko’s employment description did not require him to act as an informant or to risk his life, his personal safety, or the lives and safety of his family.

24. Mr. Mullins, Jr., and Mr. Poyer responded by threatening Plaintiff Qafko with termination of his employment. Specifically, they told him that if he “doesn’t help us with this, we will have to recommend your termination.”

25. They also told him that because of his age, he was unlikely to obtain employment elsewhere.

26. Defendant Christopher M. Perry was aware of and gave prior authorization to Mr. Mullins, Jr., Mr. Poyer and the Unidentified CBP Officers to hold these unofficial meetings with Plaintiff Qafko.

27. Furthermore, Defendant Perry was aware of and gave prior authorization to Mr. Mullins, Jr., Mr. Poyer and the Unidentified CBP Officers to threaten Plaintiff Qafko with charges and with his employment in the event that Plaintiff Qafko refuses to become an informant and infiltrate Albanian and Iraqi gangs and smugglers for intelligence gathering purposes.

28. The Defendants followed through on their threats.

29. On January 12, 2016, Plaintiff Qafko received a proposal dated January 8, 2016 to remove him from his position as a Customs and Border Protection Officer. The basis of the proposal was employment-based infractions, including Inappropriate Association and Misuse of the TECS on four separate occasions.

30. That same day, Plaintiff Qafko also received a notice dated January 8, 2016 informing him, that effective immediately, his authorization to carry a Government-issued firearm has been temporarily suspended, and will “remain in effect pending the outcome and conclusion of the administrative action.”

31. The notice also informed Plaintiff Qafko that he would be assigned duties that are “administrative in nature and [do] not require that [he] be armed. [He] will not be able to perform work in a position involved in pedestrian, vehicle, or cargo processing, which require[] [him] to be armed at all times while performing these duties.”

32. Plaintiff Qafko's credentials were revoked and he was placed on restricted administrative duties for the next six months.

33. On June 10, 2016, the proposed penalty of removal from Federal service was reduced to a five (5) day suspension.

34. An Internal Affairs Report of Investigation (ROI) subsequently turned over to Plaintiff Qafko's union representatives revealed that Internal Affairs surveillance notes and other documents regarding Plaintiff Qafko were falsified. Upon information and belief, the documents were falsified to levy the Inappropriate Association charge Internal Affairs officials intended to bring against Plaintiff Qafko.

35. Moreover, a DHS Office of Inspector General (OIG) Report of Investigation (ROI) revealed that the Inappropriate Association Charge levied against Plaintiff Qafko was inaccurate and incomplete.

36. The Inappropriate Association Charge was later dropped.

37. Upon information and belief, the Inappropriate Association Charge was manufactured by Defendants in order to coerce Plaintiff Qafko into becoming an informant.

38. In exchange for a three-day calendar suspension without pay and the two remaining days of the five-day calendar suspension being held in abeyance for twelve months, Plaintiff Qafko entered into an Abeyance Agreement on June 13, 2016 whereby he agreed to, among other things, "not to challenge any effected portion of the five (5) calendar day suspension and waive[] any and all appeal, complaint and/or grievance rights to which he may be entitled resulting from the five (5) day calendar suspension," during the life of the Agreement, only.

39. Plaintiff Qafko further agreed “to not pursue any legal action in any forum concerning the validity of th[e] Agreement or the terms contained herein,” during the life of the Agreement, only.

40. The effective termination date of the Abeyance Agreement is twelve months after June 13, 2016, the date of the execution of the Agreement, after which Plaintiff Qafko is entitled to challenge the five-day calendar suspension.

41. Pursuant to the Abeyance Agreement, Plaintiff Qafko did not waive any right to pursue a claim in connection with each of the other alleged acts of discrimination and retaliation outlined in this Complaint.

42. Throughout Plaintiff Qafko’s employment, he was repeatedly profiled, threatened, intimidated and harassed on the basis of his race, religion and national origin, and subjected to multiple investigations:

- a. From July, 2009 through June 22, 2012, he was the subject of an Office of Inspector General (OIG) investigation;
- b. From June 22, 2012 through July 25, 2012, he was the subject of an Immigration and Customs Enforcement (ICE), Office of Professional Responsibility investigation;
- c. Beginning on July 25, 2012 through September 8, 2016, he was subjected to an ongoing investigation with the Office of Internal Affairs; and,
- d. In 2015, he was subjected to an agency investigation.

43. Moreover, Plaintiff Qafko has been and continues to be denied promotion opportunities to which he is eligible and qualified.

44. Plaintiff Qafko was denied the following promotion opportunities to which he is eligible and qualified:

- a. On July 28, 2014, he was not selected for the position of CBP Officer (Program Manager), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1059462-LF, located in Herndon, VA;
- b. On August 12, 2014, he was not selected for the position of CBP Officer (Program Manager), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1058820-KAN, in various locations;
- c. On or after August 13, 2014, he was not selected for the position of CBP Officer (Program Manager), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1080720-KLF, located in Reston, VA;
- d. On August 26, 2014, he was not selected for the position of CBP Officer (Program Manager), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1080567-KLF, located in Washington, D.C.;
- e. On July 17, 2015, he was not selected for the position of Supervisory CBP Officer (First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1127573-JEG, in various locations;

- f. On October 6, 2015, he was not selected for the position of Supervisory CBP Officer (First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1396892-IC, in various locations;
- g. On June 18, 2014, he was not selected for the position of Supervisory CBP Officer (Preclearance-First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1114098-TKE, in Winnipeg;
- h. On October 24, 2014, he was not selected for the position of Supervisory CBP Officer (Preclearance-First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1195366-IC, in Montreal;
- i. On October 24, 2014, he was not selected for the position of Supervisory CBP Officer (Preclearance-First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1214652-IC, in Halifax;
- j. On August 28, 2014, he was not selected for the position of Supervisory CBP Officer (Preclearance-First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1194075-IC, in Nassau;
- k. On August 28, 2014, he was not selected for the position of Supervisory CBP Officer (Preclearance-First-Line), GS-1895-13, advertised under Job

Opportunity Announcement (JOA) Number: MHCMP-1195220-IC, in Hamilton;

- l. On September 29, 2014, he was not selected for the position of Supervisory CBP Officer (Preclearance-First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1195257-IC, in Edmonton;
- m. On October 23, 2014, he was not selected for the position of Supervisory CBP Officer (Preclearance-First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1114327-TKE, in Freeport;
- n. On April 10, 2016, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;
- o. On April 24, 2016, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;
- p. On August 7, 2016, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;
- q. On August 21, 2016, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;

- r. On September 21, 2016, he was not selected for the position of Supervisory CBP Officer (First-Line), GS-1895-13, advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1703307-AKM, in Romulus, MI;
- s. On December 02, 2016, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;
- t. On April 05, 2017, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;
- u. On August 03, 2017, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;
- v. On August 10, 2017, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;
- w. On September 03, 2017, he was not selected for the position of Supervisory CBP Officer (First-Line) advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1703307-AKM in Romulus, MI;
- x. On November 19, 2017, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI;

- y. On November 26, 2017, he was not selected for the position of temporary Supervisory CBP Officer, GS-1895-13, solicited through email by Chief Randy Dyer, at the Detroit Metro Airport in Romulus, MI; and,
- z. On November 29, 2017, he was not selected for the position of Supervisory CBP Officer (First-Line) advertised under Job Opportunity Announcement (JOA) Number: MHCMP-1960826-CAF in Romulus, MI.

45. The list of promotions outlined above to which Plaintiff Qafko was wrongfully denied is ongoing and not exhaustive.

46. Each of the promotions outlined above were given to American-born, white, Christians.

47. Upon information and belief, Plaintiff Qafko was denied the promotions outlined above and continues to be denied promotions that he is both eligible and qualified for due to retaliation for his refusal to become an informant and infiltrate Albanian and Iraqi gangs and smugglers, for reporting Defendants' actions to the Office of Inspector General, and due to his race, religion and national origin.

48. Upon information and belief, other Customs and Border Protection Officers similarly charged with Misuse of the TECS were not disciplined, issued a proposal to terminate their employment, placed on restrictive administrative duties, had their credentials revoked, relieved of their firearm, nor denied promotions.

49. Defendants treated Plaintiff Qafko's TECS usage in a manner differently than similar usage by CBP Officers similarly situated.

50. Moreover, upon information and belief, other Customs and Border Protection Officers similarly charged with Misuse of the TECS received promotions subsequent to being charged.

51. Additionally, while serving as a member of a special unit, Plaintiff Qafko was denied his security clearance by Internal Affairs, when all the other members of the Counter Terrorism Response Rover Team (CTRRT) were granted their security clearance.

52. Upon information and belief, Plaintiff Qafko was denied his security clearance due to retaliation for his refusal to become an informant and infiltrate Albanian and Iraqi gangs and smugglers, for reporting Defendants' actions to the Office of Inspector General, and due to his race, religion and national origin.

Count I

VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
(Discrimination based on race, religion and national origin)

53. Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

54. Title VII prohibits employers from discriminating against employees on the basis of their race, religion and national origin.

55. Defendants discriminated against Plaintiff by harassing, intimidating and threatening him in an attempt to coerce him to become an informant by infiltrating Albanian and Iraqi gangs and smugglers; by threatening him with charges and with his employment in retaliation for refusing to become an informant; by taking measures to remove him from his position as a CBP Officer; by bringing charges against Plaintiff in an attempt to intimidate, harass, threaten and coerce him into becoming an informant and in retaliation for his refusal to become an informant; by issuing a proposal to terminate his employment; by falsifying

documents in an attempt to levy charges against Plaintiff; by temporarily suspending his authorization to carry a Government-issued firearm; by placing Plaintiff on restricted administrative duties for six months; by repeatedly profiling and subjecting Plaintiff to repeated threats, intimidation and harassment by subjecting him to multiple investigations; by denying him his security clearance; and by denying him and continuing to deny him promotion opportunities to which he is eligible and qualified.

56. Defendants did not subject CBP Officers of other races, faiths and national origins to the same discriminatory treatment that they subjected Plaintiff to.

57. The aforementioned acts of Defendants were willful, reckless, and malicious acts of unlawful discrimination against Plaintiff due to his race, religion and national origin, in violation of the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et seq.

58. As a direct and proximate result of Defendants' actions, Plaintiff has suffered emotional distress, inconvenience, lost wages and benefits, and other consequential damages.

WHEREFORE, Plaintiff requests this Honorable Court grant relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

Count II
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
(Disparate Treatment)

59. Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

60. Title VII prohibits employers from discriminating against employees on the basis of their race, religion and national origin.

61. Defendants discriminated against Plaintiff by harassing, intimidating and threatening him in an attempt to coerce him to become an informant by infiltrating Albanian and Iraqi gangs and smugglers; by threatening him with charges and with his employment in retaliation for refusing to become an informant; by taking measures to remove him from his position as a CBP Officer; by bringing charges against Plaintiff in an attempt to intimidate, harass, threaten and coerce him into becoming an informant and in retaliation for his refusal to become an informant; by issuing a proposal to terminate his employment; by falsifying documents in an attempt to levy charges against Plaintiff; by temporarily suspending his authorization to carry a Government-issued firearm; by placing Plaintiff on restricted administrative duties for six months; by repeatedly profiling and subjecting Plaintiff to repeated threats, intimidation and harassment by subjecting him to multiple investigations; by denying him his security clearance; and by denying him and continuing to deny him promotion opportunities to which he is eligible and qualified.

62. Defendants did not subject CBP Officers of other races, faiths and national origins to the same discriminatory and disparate treatment that they subjected Plaintiff to.

63. The aforementioned acts of Defendants were willful, reckless, and malicious acts of unlawful discrimination against Plaintiff due to his race, religion and national origin, in violation of the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et seq.

64. As a direct and proximate result of Defendants' actions, Plaintiff has suffered emotional distress, inconvenience, lost wages and benefits, and other consequential damages.

WHEREFORE, Plaintiff requests this Honorable Court grant relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

Count III
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
(Hostile Work Environment)

65. Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

66. Defendants subjected Plaintiff to an unwelcome and hostile work environment based on his race, religion and national origin by harassing, intimidating and threatening him in an attempt to coerce him to become an informant by infiltrating Albanian and Iraqi gangs and smugglers; by threatening him with charges and with his employment in retaliation for refusing to become an informant; by taking measures to remove him from his position as a CBP Officer; by bringing charges against Plaintiff in an attempt to intimidate, harass, threaten and coerce him into becoming an informant and in retaliation for his refusal to become an informant; by issuing a proposal to terminate his employment; by falsifying documents in an attempt to levy charges against Plaintiff; by temporarily suspending his authorization to carry a Government-issued firearm; by placing Plaintiff on restricted administrative duties for six months; by repeatedly profiling and subjecting Plaintiff to repeated threats, intimidation and harassment by subjecting him to multiple investigations; by denying him

his security clearance; and by denying him and continuing to deny him promotion opportunities to which he is eligible and qualified.

67. The aforementioned acts of Defendants were willful, reckless, and malicious acts of unlawful discrimination against Plaintiff due to his race, religion and national origin, in violation of the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et seq.

68. As a direct and proximate result of Defendants' actions, Plaintiff has suffered emotional distress, inconvenience, lost wages and benefits, and other consequential damages.

WHEREFORE, Plaintiff requests this Honorable Court grant relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

Count IV
VIOLATION OF THE FIFTH AMENDMENT
TO THE UNITED STATES CONSITUTION
(Equal Protection)

69. Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

70. Defendants unlawfully violated Plaintiffs rights based solely on his race, religion and national origin in violation of his rights to equal protection guaranteed by the Fifth Amendment to the United States Constitution, by harassing, intimidating and threatening him in an attempt to coerce him to become an informant by infiltrating Albanian and Iraqi gangs and smugglers; by threatening him with charges and with his employment in retaliation for refusing to become an informant; by taking measures to remove him from

his position as a CBP Officer; by bringing charges against Plaintiff in an attempt to intimidate, harass, threaten and coerce him into becoming an informant and in retaliation for his refusal to become an informant; by issuing a proposal to terminate his employment; by falsifying documents in an attempt to levy charges against Plaintiff; by temporarily suspending his authorization to carry a Government-issued firearm; by placing Plaintiff on restricted administrative duties for six months; by repeatedly profiling and subjecting Plaintiff to repeated threats, intimidation and harassment by subjecting him to multiple investigations; by denying him his security clearance; and by denying him and continuing to deny him promotion opportunities to which he is eligible and qualified.

71. Defendants' unlawful actions described above targeting Plaintiff based solely on his race, religion and national origin violate Plaintiff's rights to equal protection guaranteed by the Fifth Amendment to the United States Constitution because persons of other races, faiths and national origins are not subjected to similar treatment.

72. Defendants' above-described actions, policies, course of conduct or pattern of practice that mandate or permit the above-described treatment of Plaintiff is discriminatory and constitutes an action that targets religious conduct for distinctive treatment.

73. Defendants' above-described actions, policies, course of conduct or pattern of practice that mandate or permit the above-described treatment of Plaintiff have had a discriminatory effect upon him and have disparately impacted him, and not CBP Officers of other races, religious and national origins.

WHEREFORE, Plaintiff requests this Honorable Court grant an injunction (1) prohibiting Defendants from intimidating, harassing and threatening CBP Officers to act as informants based on their race, religion and national origin; (2) ordering Defendants to make

future promotions to which Plaintiff Qafko is qualified and eligible available to him; and, (3) prohibiting Defendants from discriminating against Plaintiff Qafko and other CBP Officers when determining who to give a promotion. Additionally, Plaintiff requests an award of all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

Count V
VIOLATION OF THE FIFTH AMENDMENT
TO THE UNITED STATES CONSTITUTION
(Free Exercise of Religion)

74. Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

75. In choosing his faith, Plaintiff is engaging in constitutionally protected activity.

76. Defendants' above-described actions have deprived and continue to deprive Plaintiff's First Amendment right to free exercise of religion in violation of the Free Exercise Clause of the United States Constitution because Defendants have and continue to repeatedly discriminate against Plaintiff based on his faith.

77. Defendants' above-described actions constitute a substantial burden on Plaintiff's First Amendment rights, an adverse action against Plaintiff motivated by his religious beliefs and practices, and an action that targets religious conduct for distinctive treatment.

78. The repeated and continued discrimination, harassment and intimidation based on Plaintiff's religion constitute retaliation that has caused psychological harm to Plaintiff.

79. Defendants' above-described actions, policies, course of conduct or pattern of practice of targeting Plaintiff and other Muslims similarly-situated in the same manner do not serve a legitimate, public or valid law enforcement purpose or a compelling state interest.

80. Even assuming that Defendants' actions do further a compelling state interest, they are not narrowly tailored to achieve any such interest.

WHEREFORE, Plaintiff requests this Honorable Court grant an injunction (1) prohibiting Defendants from intimidating, harassing and threatening CBP Officers to act as informants based on their race, religion and national origin; (2) ordering Defendants to make future promotions to which Plaintiff Qafko is qualified and eligible available to him; and, (3) prohibiting Defendants from discriminating against Plaintiff Qafko and other CBP Officers when determining who to give a promotion. Additionally, Plaintiff requests an award of all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

Count VI
VIOLATION OF THE FIRST AMENDMENT
TO THE UNITED STATES CONSTITUTION
(Establishment Clause)

81. Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

82. In choosing his faith, Plaintiff is engaging in constitutionally protected activity.

83. Defendants' above-described actions were substantially prompted by Plaintiff's religious exercise.

84. Defendants' above-described actions have deprived and continue to deprive Plaintiff's First Amendment rights to be free from religious discrimination in violation of the Establishment Clause of the United States Constitution because Defendants have and continue to repeatedly discriminate against Plaintiff.

85. Defendants' above-described actions in targeting Plaintiff based on his religious practices and not targeting CBP Officers of other faiths suggests or amounts to a preference of one religion over another in choosing CBP Officers to coerce into becoming informants in violation of the Establishment Clause of the United States Constitution.

86. Defendants' above-described actions constitute a substantial burden on Plaintiff's First Amendment rights to free exercise of religion, an adverse action against Plaintiff motivated by his religious beliefs and practices, and an action that targets religious conduct for distinctive treatment.

87. Defendants' above-described actions, policies, course of conduct or pattern of practice of targeting Plaintiff and other Muslims similarly-situated in the same manner based solely on their religious beliefs would deter an individual of ordinary firmness from openly exercising his/her right to practice his/her religion.

88. The repeated and continued discrimination, harassment and intimidation based on Plaintiff's religion constitute retaliation that has caused psychological harm to Plaintiff.

89. Defendants' above-described actions, policies, course of conduct or pattern of practice of targeting Plaintiff and other Muslims similarly-situated in the same manner do not serve a legitimate, public or valid law enforcement purpose or a compelling state interest.

90. Even assuming that Defendants' actions do further a compelling state interest, they are not narrowly tailored to achieve any such interest.

Count VII
VIOLATION OF THE FIRST AMENDMENT
TO THE UNITED STATES CONSTITUTION
(Retaliation)

91. Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

92. In choosing his faith and in choosing to report Defendants' unlawful conduct described above to OIG, Plaintiff is engaging in constitutionally protected activity.

93. Defendants' above-described actions were substantially prompted by Plaintiff's religious exercise and by his actions in reporting Defendants' unlawful conduct described above to OIG.

94. Defendants' above-described actions have deprived and continue to deprive Plaintiff's First Amendment rights to free exercise of religion, to be free from religious discrimination in violation of the Free Exercise Clause and Establishment Clause of the United States Constitution and to be free from unlawful retaliation because Defendants have and continue to repeatedly discriminate against Plaintiff.

95. Defendants' above-described actions in targeting Plaintiff based on his religious practices and not targeting CBP Officers of other faiths suggests or amounts to a preference of one religion over another in choosing CBP Officers to coerce into becoming informants in violation of the Establishment Clause of the United States Constitution.

96. Defendants' above-described actions constitute a substantial burden on Plaintiff's First Amendment rights, an adverse action against Plaintiff motivated by his

religious beliefs and practices, and an action that targets religious conduct for distinctive treatment.

97. The repeated and continued discrimination, harassment and intimidation based on Plaintiff's religion constitute retaliation that has caused psychological harm to Plaintiff.

98. Defendants' above-described actions, policies, course of conduct or pattern of practice of targeting Plaintiff and other Muslims similarly-situated in the same manner do not serve a legitimate, public or valid law enforcement purpose or a compelling state interest.

99. Even assuming that Defendants' actions do further a compelling state interest, they are not narrowly tailored to achieve any such interest.

WHEREFORE, Plaintiff requests this Honorable Court grant an injunction (1) prohibiting Defendants from intimidating, harassing and threatening CBP Officers to act as informants based on their race, religion and national origin; (2) ordering Defendants to make future promotions to which Plaintiff Qafko is qualified and eligible available to him; and, (3) prohibiting Defendants from discriminating against Plaintiff Qafko and other CBP Officers when determining who to give a promotion. Additionally, Plaintiff requests an award of all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

Prayer for Relief

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in his favor and against Defendants on each and every count in this Complaint, and enter an Order awarding the following relief:

1. An injunction prohibiting Defendants from intimidating, harassing and threatening CBP Officers to act as informants based on their race, religion and national origin;

2. An injunction ordering Defendants to make future promotions to which Plaintiff Qafko is qualified and eligible available to him;

3. An injunction prohibiting Defendants from discriminating against Plaintiff Qafko and other CBP Officers when determining who to give a promotion;

4. Payment for all economic damages, including but not limited to, back pay, front pay, and lost benefits;

5. Payment for non-economic damages, including emotional harm;

6. Punitive damages;

7. Statutory damages;

8. An award of attorneys' fees, costs, and expenses of all litigation; and,

9. All such other and further relief as the Court may deem just and proper.

JURY DEMAND

NOW COMES Plaintiff, by and through his undersigned counsel, and hereby demands trial by jury of the above-referenced causes of action.

Respectfully submitted,

CAIR NATIONAL LEGAL DEFENSE
FUND (CAIR)

BY: /s/ Lena Masri
LENA F. MASRI (DC: 1000019)
GADEIR I. ABBAS (VA: 81161) ‡ *
AHMED MOHAMED (NY: 938392) ‡
Attorneys for Plaintiffs
453 New Jersey Ave, SE
Washington, DC 20003
Phone: (202) 488-8787

‡ *Admitted to practice in this Court*
* *Mr. Abbas is licensed in VA, not in D.C. Practice limited to federal matters*

Dated: December 5, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2017, I electronically filed the foregoing document with the Clerk of the Court for the Eastern District of Michigan using the ECF System, which will send notification to the registered participants of the ECF System as listed on the Court's Notice of Electronic Filing.

/s/ Lena Masri _____